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VIA ELECTRONIC MAIL

FILED/ACCEPTED

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

JUL 17 2009

Federal Communications Commission
Office of the Secretary

Att: Telecommunications Access Policy Division
Wireline Competition Bureau

Re: ~~CC Docket No. 96-45 Federal State Joint Board on Universal Service~~ *cc*

WC Docket No. 03-109 - Lifeline and Link-up
Dear Ms. Dortch:

This purpose of this letter is to bring to the attention of the Commission and specifically to the attention of the Wireline Competition Bureau's Telecommunications Access Policy Division, a situation which is resulting from a current Commission requirement which my client, TracFone Wireless, Inc. ("TracFone") believes was not intended by the rule.

The rule is the "one-per-household" rule. Pursuant to that rule, only one telephone line (wireline or wireless) per household may receive Lifeline support from the federal Universal Service Fund and Lifeline applicants are required to certify under penalty of perjury that they comply with that requirement. The rule is intended to prevent so-called "double dipping" whereby families or households obtain multiple Lifeline benefits. As indicated by the attached informal complaint recently sent to TracFone by the Commission's Consumer & Government Affairs Bureau, the one-per-household rule is having an unintended adverse impact on residents of homeless shelters. The complainant's name and address are redacted from the attached copy and TracFone will respond to the complaint in conformance with the Commission's complaint response requirements. However, there can be little doubt that homeless shelter residents are among America's most needy and should be entitled to Lifeline benefits.

The underlying issue warrants the Commission's attention. Under the one-per-household rule, Eligible Telecommunications Carriers ("ETCs") may not provide Lifeline service to more than one person at an address. In the case of multifamily dwelling units such as apartment buildings, or even nursing homes and assisted living facilities, this is not an impediment since the street address may be the same but the apartment number or room number will be different (e.g., Joseph Smith at 123 Main Street, Apartment 1, and James Jones at 123 Main Street, Apartment 2 are different addresses, as are John Smith, Maplevue Nursing Home, Room 10 and James Jones, Maplevue Nursing Home, Room 12). Unlike those situations, in homeless shelters, housing is often dormitory style with multiple unrelated persons residing in the same room. TracFone doubts whether it was the Commission's intention to limit Lifeline service to one resident at each homeless shelter. However, if TracFone enrolls two or more otherwise

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Lifeline-qualified residents of the same shelter with the same street address, it runs the risk of being found in violation of the one-per-household rule if audited.

TracFone acknowledges that the one-per-household rule is not problematic with respect to wireline Lifeline-supported service since typically there would be only one or a few wireline telephones at the shelter provided by the shelter operator which could be available for use by residents. However, with a wireless Lifeline offering like TracFone's SafeLink Wireless program, it is now possible for low income consumers to obtain their own wireless handsets and wireless service. TracFone wants to make its Lifeline service available to all low income persons, including those who reside in homeless shelters, and it receives many applications for service from shelter residents.

By this letter, TracFone respectfully asks the Commission to clarify that the one-per-household rule is not intended to limit the availability of Lifeline-supported service to more than one otherwise qualified low income resident of homeless shelters and to provide guidance on how ETCs may enroll residents of shelters in their Lifeline programs without risking violation of the rule. One possibility would be to have such applicants certify on their enrollment forms under penalty of perjury that the address listed is a shelter. There may be other less intrusive means for identifying whether Lifeline applicants reside in shelters.

Thank you for your attention to this important public interest matter. If there are questions regarding this letter, please communicate directly with undersigned counsel for TracFone.

Sincerely,



Mitchell F. Brecher

Enclosure

Cc: Ms. Jennifer McKee
Mr. Thomas Buckley

CARRIER RESPONSE COVER PAGE

COMPLAINT # :

CARRIER : TracFone Wireless, Inc.

CONSUMER NAME :



FCC Instructions: When scanning the carrier's response, select file type "Carrier Response" and upload file to the complaint # noted above.

Complaint Summary:

Date Served : 07/08/2009

Response Due Date : 08/07/2009

Carrier : TracFone Wireless, Inc.

Form Type : 2000A

Consumer Name :

Expected Response Method: Paper

User complaint number:

Carrier: **TracFone Wireless, Inc.**

Form 2000A – Deceptive or Unlawful Advertising or Marketing Complaint

Consumer's Information:

First Name: Last Name:

Company Name:

(Complete only if you are filing this complaint on behalf of a company or an organization.)

Street Address or Post Office Box Number:

City: State: **NY** Zip Code:

Telephone Number (Residential or Business):

E-mail Address:

***** ANSWER EACH QUESTION THAT APPLIES TO YOUR SPECIFIC COMPLAINT *****

1. If you are complaining about deceptive or misleading advertising or marketing by a telephone company, wireless carrier, or internet access service provider, provide the following information:

a. Name of company: **Tracfone trading as Safelink Wireless**

b. Type of company:

c. Date of problem (mm/dd/yyyy): **06/18/2009**

d. Description of advertising or marketing and details of your complaint: **Tracfone, (in New York State: Safelink). Has a subsidy from the US government to provide qualifying low income persons with a free cell phone. One stipulation is that only one cell phone per household is allowed. However, they are denying homeless people living in shelters, who otherwise qualify, a cell phone. They are defining a shelter as a household. It is clearly not. What they are doing is only providing one cell phone per ADDRESS, not per HOUSEHOLD. Clearly, this is discrimination against the homeless living in shelters. I have attempted to clarify this situation with Safelink/Tracfone. However, they refuse to see that a homeless shelter is NOT a household. Or that the homeless, living in shelters could greatly benefit from a cell phone. I was told if I had problem, to file a complaint with you, which is what I m doing. I am sure discrimination against one of our most vulnerable populations was not what you had in mind when you provided Tracfone with this subsidy.**

2. If your complaint is about advertising on a radio or television station, provide the following information:

a. Station call sign (e.g., "KDID," "WZUF," "KDIU-FM," "WZUE-TV"):

b. Radio station frequency (e.g., "1020" or "88.5");
or TV channel (e.g., "13"):

c. Station location: City: State:

d. Advertising information: Date (mm/dd/yyyy):
Program:

e. Description of advertising and details of your complaint:

3. If you are complaining about advertising by a cable or satellite operator (e.g., Comcast, Time Warner, DirecTV), provide the following information:

a. Operator name:

b. Operator location: City: State:

c. Cable network (e.g., ESPN, Nickelodeon):

d. Advertising information: Date (mm/dd/yyyy):
Program:

e. Description of advertising and details of your complaint:

User complaint number:

Form 2000A – Deceptive or Unlawful Advertising or Marketing Complaint
***** ANSWER EACH QUESTION THAT APPLIES TO YOUR SPECIFIC COMPLAINT *****

You may submit this form over the Internet at <http://www.fcc.gov/cgb/complaints.html>, by e-mail to fccinfo@fcc.gov, by fax to 1-866-418-0232, or by postal mail to:

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Complaints
445 12th Street, SW
Washington, D.C. 20554

In addition, you may submit your complaint over the telephone by calling 1-888-CALL-FCC or 1-888-TELL-FCC (TTY). If you choose to submit your complaint over the telephone, an FCC customer service representative will fill out an electronic version of the form for you during your conversation. If you have any questions, feel free to contact the FCC at 1-888-CALL-FCC or 1-888-TELL-FCC (TTY).

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT AND THE PRIVACY ACT

The Federal Communications Commission is authorized under the Communications Act of 1934, as amended, to collect the personal information that we request in this form. This form is used for complaints that involve deceptive or unlawful advertising or marketing. The public reporting for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, OMD-PER, Paperwork Reduction Project (3060-0874), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to PRA@fcc.gov. PLEASE DO NOT SEND YOUR COMPLETED FORMS TO THIS ADDRESS.

Remember - You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0874.

In addition, the information that consumers provide when filling out FCC Form 2000 is covered by the system of records notice, FCC/CGB-1, Informal Complaints and Inquiries File (Broadcast, Common Carrier, and Wireless Telecommunications Bureau Radio Services). The Commission is authorized to request this information from consumers under 47 U.S.C. 206, 208, 301, 303, 309(e), 312, 362, 364, 386, 507, and 51; and 47 CFR 1.711 et seq.

Under this system of records notice, FCC/CGB-1, the FCC may disclose information that consumers provide as follows: when a record in this system involves a complaint against a common carrier, the complaint is forwarded to the defendant carrier who must, within a prescribed time frame,

User complaint number:

Form 2000A – Deceptive or Unlawful Advertising or Marketing Complaint
***** ANSWER EACH QUESTION THAT APPLIES TO YOUR SPECIFIC COMPLAINT *****

either satisfy the complaint or explain to the Commission and the complainant its failure to do so; where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation, or order; a record from this system may be disclosed to a Federal agency in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit; a record on an individual in this system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body; a record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body when: (a) the United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Commission determines that the disclosure is relevant or necessary to the litigation; a record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office; a record from this system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

In each of these cases, the FCC will determine whether disclosure of the information in this system of records **notice** is compatible with the purpose for which the records were collected. Furthermore, information in **this system of records** notice is available for public inspection after redaction of information that could identify the complainant or correspondent, i.e., name, address and/or telephone number.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507 AND THE PRIVACY ACT OF 1974, PUBLIC LAW 93-579, DECEMBER 31, 1974, 5 U.S.C. SECTION 552a(e)(3).
